

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

AMERICAN CASUALTY COMPANY
OF READING PENNSYLVANIA,

Plaintiff,

v.

Case No. 06-C-1260

NATURE'S WAY TISSUE CORPORATION,

Defendant.

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT

On December 6, 2006, American Casualty Company of Reading, Pennsylvania ("American Casualty") filed its complaint for declaratory relief in the above action. American Casualty seeks a determination by the court that it has no duty or obligation to defend or indemnify its insured, Nature's Way Tissue Corporation ("Nature's Way"), in a lawsuit presently pending against Nature's Way in United States District Court for the Northern District of Alabama, captioned *Afflink, Inc. v. Nature's Way Tissue Corporation*, Case No. 7:05-CV-01521. The record reflects that a Waiver of Summons was executed by the Chief Executive Officer of Nature's Way on December 19, 2006. Pursuant to Fed. R. Civ. P. 4(d)(3), Nature's Way was required to file an answer to the complaint within sixty days thereafter. Nature's Way has not filed an answer or otherwise appeared in the action. In fact, Nature's Way has indicated that it does not intend to respond to American Casualty's action and instead is proceeding to resolve its matter with Afflink on its own.

Based upon the indication by Nature's Way that it did not intend to respond to the motion for summary judgment and that it was proceeding to settle the matter on its own, the court entered an order on March 5, 2007, directing American Casualty to show cause why this matter is not mute. American Casualty has responded to the court's order and shown that, despite its decision not to respond to American Casualty's request for declaratory relief, Nature's Way refuses to sign a stipulation and has not withdrawn its request that American Casualty defend or indemnify it. Based upon the foregoing, the court concludes that the case is not moot. The court also finds that it has jurisdiction pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are citizens of diverse states. Based upon the failure of Nature's Way to answer or otherwise respond to the complaint, and based upon the failure of Nature's Way to respond to the motion for a default judgment, the court finds that Nature's Way is in default and that American Casualty is entitled to Judgment as requested in its complaint.

Accordingly, the court orders that Judgment be entered in favor of American Casualty and against Nature's Way declaring that American Casualty has no duty to defend or indemnify Nature's Way under its policy of insurance with respect to any claims in the action entitled *Afflink v. Nature's Way* presently pending in the Northern District of Alabama. The clerk is directed to enter judgment in accordance herewith.

SO ORDERED this 28th day of March, 2007.

s/ William C. Griesbach
William C. Griesbach
United States District Judge